

February 11, 2021, Agenda – Open Meeting Matter

February 4, 2021, Agenda – Public Hearing

November 24, 2020, Agenda – Open Meeting Matter

March 26, 2020, Agenda – Open Meeting Matter

To: The Board

From: Chad H. Gholizadeh

Date: February 4, 2021

Re: Proposed Amendments to Board Rules § 1-01(e): Meals at Meetings

At its November 2020 Open Meeting, the Board authorized Staff to submit to the New York City Law Department and Mayor’s Office of Operations proposed amendments to Board Rules § 1-01(e), governing the acceptance by public servants of meals and refreshments at meetings. The minutes to the Open Meetings at which the proposed amendments were discussed are attached as **Exhibit 1**. The proposed amendments were certified pursuant to the City Administrative Procedure Act and were published in the City Record on January 5, 2021. A public hearing was held on February 4, 2021. No comments were received in advance of the hearing, nor did any member of the public testify in person at the public hearing.

Staff recommends that the Board adopt the text of amended Board Rules § 1-01(e) with two sets of changes: (1) stylistic edits to the Statement of Basis and Purpose to reflect that the amended rule is no longer a proposal; and (2) stylistic edits from the Law Department to streamline the second and third paragraphs of the Statement of Basis and Purpose. A version of the Notice of Adoption, with changes tracked to the last version reviewed by the Board is attached as **Exhibit 2**, and a clean version is attached as **Exhibit 3**. Once approved by the Board, the Notice of Adoption will be published in the City Record and will take effect 30 days after publication. See Charter Section 1043(f).

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: March 26, 2020

Present:

Board Members: Chair Richard Briffault and Members Fernando A. Bohorquez, Jr., Anthony Crowell, Jeffrey D. Friedlander, and Erika Thomas

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:35 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law and designated the undersigned as the Recording Secretary for purposes of the meeting.

The Chair stated that the meeting was called to discuss proposed amendments to Board Rules § 1-07; § 1-01(h); § 1-01(e)-(g); § 1-18; § 1-13; and §1-17.

Board Rules § 1-07

After a brief introduction, the Chair asked for any comments by the Board or Staff. The following comments constitute the changes as agreed upon by the Board and Staff to the proposed amendments to Board Rules § 1-07:

- In the Statement of Basis and Purpose, p. 4, line 10: change “unpaid or unpaid” to “paid or unpaid”
- § 1-07(d)(2)(i): replace “in role” with “no role”

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

Board Rules § 1-01(h)

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

Board Rules § 1-01(e)-(g)

The Chair asked for any comments by the Board or Staff and upon motion duly made and seconded, the Board unanimously voted to continue discussions at a future open meeting.

Board Rules § 1-18

The Chair asked for any comments by the Board or Staff. The Board and Staff agreed to change the caption from “Endorsements” to “Use of City Title in Promotional Materials.”

Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

Board Rules §§ 1-13 and 1-17

After a brief introduction, the Chair asked for any comments by the Board or Staff. There were no comments. Upon motion duly made and seconded, the Board unanimously voted to adopt the proposed amendments incorporating the proposed changes as the final rule.

The open meeting was adjourned at approximately 10:02 a.m.

Respectfully submitted,

Julia H. Lee
Recording Secretary

Minutes of the Open Meeting of the New York City Conflicts of Interest Board

Date: November 24, 2020

Present:

Board Members: Chair Jeffrey D. Friedlander and Members Fernando A. Bohorquez, Jr., Anthony W. Crowell, Wayne G. Hawley, and Nisha Agarwal

Board Staff: Ethan Carrier, Chad Gholizadeh, Ana Gross, Christopher Hammer, Gavin Kendall, Julia Lee, Carolyn Miller, Katherine Miller, Ari Mulgay, Yasong Niu, Jeffrey Tremblay, Clare Wiseman, and Juliya Ziskina.

Guests: None

The Board and Staff participated by videoconference pursuant to Executive Order No. 202 issued on March 7, 2020. The meeting was called to order by the Chair at approximately 9:35 a.m. The Chair stated that the meeting was being conducted pursuant to the New York State Open Meetings Law to discuss proposed amendments to Board Rules §§ 1-04, 1-01(i)-(m), and 1-01(e).

Board Rules § 1-04

After a brief introduction by Staff and discussion with the Board, the following change was agreed to by the Board and Staff:

- § 1-04(c)(1): replace “(d)(2)” with “(c)(2)”

The Board unanimously agreed to adopt the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations for review.

Board Rules §§ 1-01(i), (j), (k), (l) and (m)

After a brief introduction by Staff and discussion with the Board, the following change was agreed to by the Board and Staff:

- § 1-01(k): revise to list permissive gifts from superiors to subordinates and between peers first.

The Board agreed to continue discussions at a future open meeting.

Board Rules § 1-01(e)

After a brief introduction by Staff and discussions with the Board, the following change was agreed to by the Board and Staff:

- § 1-01(e)(1): add “otherwise prohibited as a valuable gift”

The Board unanimously agreed to approve the proposed amendments as the final rule to be submitted to the Law Department and the Mayor’s Office of Operations.

The open meeting was adjourned at approximately 10:26 a.m.

Respectfully submitted,
Julia H. Lee
Recording Secretary

New York City Conflicts of Interest Board

Notice of Public Hearing and Opportunity to Comment on Proposed Adoption of Final Rules Regarding Gifts

~~What are we proposing?~~ The NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board ~~is proposing to amend~~ has adopted Board Rules amending its rules governing the acceptance by public servants of gifts of meals or refreshments at events.

~~When~~ The proposed Rules were published in the City Record on January 5, 2021, and ~~where is the Hearing?~~ a public hearing was held on February 4, 2021. No comments were received. The Conflicts of Interest Board will hold a public hearing on the proposed rule. The public hearing will take place by video conference at [] on [] and is accessible by:

- ~~Internet Video and Audio.~~ To access the hearing by Zoom, ~~use~~ now adopts the following URL: [].
- ~~Telephone.~~ To access the hearing by telephone, dial []. When prompted, use the following access code [] and password [].

~~How do I comment on the proposed rules?~~ Anyone can comment on the proposed rules by:

- ~~Website.~~ You can submit comments to the Conflicts of Interest Board through the NYC rules website at <http://rules.cityofnewyork.us>.
- ~~Email.~~ You can email comments to Rules@COIB.nyc.gov.
- ~~By Speaking at the Hearing.~~ Anyone who wants to comment on the proposed rule at the public hearing may speak for up to three minutes. Please access the public hearing by Internet Video and Audio or by Telephone using the instructions above. It is recommended, but not required, that commenters sign up prior to the hearing by contacting the Conflicts of Interest Board by phone at (212) 437-0730 or by email at lee@coib.nyc.gov.

~~Is there a deadline to submit comments?~~ Yes, you must submit written comments by [date].

~~Do you need assistance to participate in the hearing?~~ You must tell the Conflicts of Interest Board if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 437-0723. You must tell us by [date].

~~Can I review the comments made on the proposed rules?~~ You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral

~~comments concerning the proposed rule will be available to the public at the Conflicts of Interest Board, 2 Lafayette Street, Suite 1010, New York, New York 10007.~~

~~What authorizes the Conflicts of Interest Board to make this rule? Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter authorize the Conflicts of Interest Board to make this proposed rule.~~

~~Where can I find the Conflicts of Interest Board's rules? The Conflicts of Interest Board's rules are in Title 53 of the Rules of the City of New York.~~

~~What rules govern the rulemaking process? The Conflicts of Interest Board must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.~~

STATEMENT OF BASIS AND PURPOSE

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board ~~proposes to update~~updates Board Rules § 1-01(e), the exception to the “Valuable Gifts Rule” that permits a public servant to accept gifts of meals when conducting City business, in light of the Board’s almost 30 years of experience administering these rules.

Existing

~~The previous version of~~ Board Rules § 1-01(e) ~~has~~did not ~~provided~~provide sufficient guidance to public servants as to whether they could accept food offered to them during or after meetings attended in connection with the performance of their City duties. ~~Existing Board Rules § 1-01(e)(1) is~~This rule proved to be so over-inclusive, with its multiple and seemingly overlapping provisions, that it ~~both swallows the specific scenarios described in the other four paragraphs of the section and also permits the acceptance of meals at an ever expanding universe of meetings on the sole predicate that the public servant attended the meeting “for official reasons.”~~ Moreover, ~~the existing explanatory materials to Existing Board Rules § 1-01(e) are insufficient~~was difficult to clarify the intent behind each of the remaining paragraphs, and, asprovide meaningful guidance. ~~As practice has demonstrated, these are the situations described were not often~~a realistic reflection of the actual situations in which public servants often find themselves.

~~In proposed~~ Board Rules § 1-01(e), the Board ~~would replace existing~~has replaced the previous version of Board Rules § 1-01(e)’s scenario-based analysis with a simple rule permitting public servants to accept free meals or refreshments at a meeting attended in the course of and for the purpose of conducting City business provided that four specific ~~factors~~criteria are met: ~~(i). First, the public servant did not solicit the meal~~cannot accept meals or refreshments; ~~(ii) that they have solicited, such as by suggesting that a vendor order food for a City meeting.~~ Second, the meal or refreshments aremust be available to all ~~participants~~people participating in the meeting or event without additional charge; ~~(iii). Third, the meal or refreshments are~~may not be separable from the meeting at which the City business is being conducted; ~~and (iv). This means, for example,~~

that the public servant cannot accept the meal if it would take place after the meeting's City purpose has been concluded; nor, also by way of example, can they accept refreshments offered at an event around the corner from the office where City business is being conducted.

Finally, the meeting at which the City business is being conducted ~~was not~~cannot have been scheduled for the purpose of obtaining the meal or refreshments. ~~This, such as by scheduling the meeting to take place at a restaurant over lunch or dinner. This particular~~ revision codifies the Board's oft-given informal advice that public servants should not accept free meals at meetings except under limited circumstances, thus avoiding the practice of a vendor scheduling an important "meeting" to negotiate the terms of a City contract over dinner or cocktails or of a legitimate meeting "running long" so that a developer can continue the business discussion while hosting the public servant at an expensive restaurant. See COIB v. Tuller, COIB Case No. 2015-428 (2016); COIB v. Secreto, COIB Case No. 2015-428a (2016); COIB v. Pizzuti, COIB Case No. 2015-428b (2016) (~~fining a New York City Police Department ("three NYPD") Chief, former Chief, and Assistant Chief~~ Chiefs each paid fines of \$1,500 each in connection with their receipt of gifts of meals from the Queens Library President and CEO with whom they dealt as part of their NYPD duties).

New material is underlined.

Section 1. Section 1-01(e) of Chapter 1 of Title 53 of the Rules of the City of New York is REPEALED and new a Section 1-01(e) is added to read as follows:

(e) Meals and Refreshments at Meetings

- (1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept free meals or refreshments otherwise prohibited as valuable gifts at a meeting attended in the course of and for the purpose of conducting City business, provided that:
- i. the public servant did not solicit the meal or refreshments;
 - ii. the meal or refreshments are available to all participants without charge;
 - iii. the meal or refreshments are not separable from the meeting at which the City business is being conducted; and
 - iv. the meeting at which the City business is being conducted was not scheduled for the purpose of obtaining the meal or refreshments.

New York City Conflicts of Interest Board

Notice of Adoption of Final Rules

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Sections 1043, 2603(a), 2603(c)(4), and 2604(b)(5) of the City Charter, that the Conflicts of Interest Board has adopted Board Rules amending its rules governing the acceptance of gifts of meals or refreshments at events.

The proposed Rules were published in the City Record on January 5, 2021, and a public hearing was held on February 4, 2021. No comments were received. The Conflicts of Interest Board now adopts the following Rules.

STATEMENT OF BASIS AND PURPOSE

In accordance with the mandate of City Charter § 2603(c)(4) for the Board to review all its advisory opinions and initiate rulemaking to adopt those with “interpretative value in construing provisions” of Chapter 68, the Board has been reviewing the 29 advisory opinions it has issued concerning public servants’ acceptance of gifts. In connection with this comprehensive review, the Board updates Board Rules § 1-01(e), the exception to the “Valuable Gifts Rule” that permits a public servant to accept gifts of meals when conducting City business, in light of the Board’s almost 30 years of experience administering these rules.

The previous version of Board Rules § 1-01(e) did not provide sufficient guidance to public servants as to whether they could accept food offered to them during or after meetings attended in connection with the performance of their City duties. This rule proved to be so over-inclusive, with its multiple and seemingly overlapping provisions, that it was difficult to provide meaningful guidance. As practice demonstrated, the situations described were not a realistic reflection of the actual situations in which public servants often find themselves.

In Board Rules § 1-01(e), the Board has replaced the previous version of Board Rules § 1-01(e)’s scenario-based analysis with a simple rule permitting public servants to accept free meals or refreshments at a meeting attended in the course of and for the purpose of conducting City business provided that four specific criteria are met. First, the public servant cannot accept meals or refreshments that they have solicited, such as by suggesting that a vendor order food for a City meeting. Second, the meal or refreshments must be available to all people participating in the meeting or event without additional charge. Third, the meal or refreshments may not be separable from the meeting at which the City business is being conducted. This means, for example, that the public servant cannot accept the meal if it would take place after the meeting’s City purpose has been concluded; nor, also by way of example, can they accept refreshments offered at an event around the corner from the office where City business is being conducted.

Finally, the meeting at which the City business is being conducted cannot have been scheduled for the purpose of obtaining the meal or refreshments, such as by scheduling the meeting to take place at a restaurant over lunch or dinner. This particular revision codifies the Board’s oft-given informal advice that public servants should not accept free meals at meetings except under

limited circumstances, thus avoiding the practice of a vendor scheduling an important “meeting” to negotiate the terms of a City contract over dinner or cocktails or of a legitimate meeting “running long” so that a developer can continue the business discussion while hosting the public servant at an expensive restaurant. See COIB v. Tuller, COIB Case No. 2015-428 (2016); COIB v. Secreto, COIB Case No. 2015-428a (2016); COIB v. Pizzuti, COIB Case No. 2015-428b (2016) (three NYPD Chiefs each paid fines of \$1,500 in connection with their receipt of gifts of meals from the Queens Library President and CEO with whom they dealt as part of their NYPD duties).

New material is underlined.

Section 1. Section 1-01(e) of Chapter 1 of Title 53 of the Rules of the City of New York is REPEALED and new a Section 1-01(e) is added to read as follows:

(e) Meals and Refreshments at Meetings

(1) For the purposes of Charter § 2604(b)(3) and Charter § 2604(b)(5), a public servant may accept free meals or refreshments otherwise prohibited as valuable gifts at a meeting attended in the course of and for the purpose of conducting City business, provided that:

- i. the public servant did not solicit the meal or refreshments;
- ii. the meal or refreshments are available to all participants without charge;
- iii. the meal or refreshments are not separable from the meeting at which the City business is being conducted; and
- iv. the meeting at which the City business is being conducted was not scheduled for the purpose of obtaining the meal or refreshments.